

1 Hon.  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

8 SARAH HAWES KIMSEY; TARUL KODE  
9 TRIPATHI; and CATHERINE  
FREUDENBERG,

10 Plaintiffs,

11 v.  
12 CITY OF SAMMAMISH, a municipal  
13 corporation; and CELIA WU, an individual,

14 Defendants.

15 No.

16 COMPLAINT FOR INJUNCTIVE RELIEF  
17 AND DAMAGES

18 **I. NATURE OF THE CASE**

19 1.1 Among our most treasured rights protected under the First Amendment to the  
20 United States Constitution are the rights to free speech and to criticize and seek redress from our  
21 government. Governmental censorship and silencing of dissenting voices are antithetical to our  
22 very form of government and way of life.

23 1.2 This case arises out of the City of Sammamish's repeated and ongoing censorship  
24 of Plaintiffs in violation of the First Amendment. City of Sammamish Communications Manager  
25 Celia Wu operates the City's official government Facebook page and imposes a set of rules  
26 regarding citizen comments on that page. City of Sammamish officials, including Ms. Wu, delete  
27 any and all comments that are critical of City government under the guise of enforcing the  
"rules."

COMPLAINT - 1

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1       1.3   At the onset of the COVID-19 pandemic, the City of Sammamish began  
 2 conducting its City Council meetings online (rather than in person) by streaming a live video  
 3 feed on the City's Facebook page and allowing citizens to post comments. Plaintiffs Catherine  
 4 Freudenberg and Sarah Kimsey regularly attend and participate in City of Sammamish City  
 5 Council meetings, and when the City began streaming them, the two routinely posted comments  
 6 on Facebook during the meetings. The vast majority of their comments were critical of City  
 7 government. In violation of the First Amendment, Defendants deleted most or all of  
 8 Ms. Kimsey's comments, and selectively deleted Ms. Freudenberg's comments that were critical  
 9 of the City government.

10      1.4   In February 2021, which is Black History Month, the City of Sammamish shared  
 11 a post on Facebook regarding a recruiting advertisement directed at youth on behalf of the  
 12 Sammamish Police Foundation, an organization that utilizes symbols representative of white  
 13 supremacy to many people of color, including the "thin blue line" flag. Ms. Tripathi commented  
 14 on the post voicing her concerns and disappointment that the City of Sammamish had posted  
 15 this, especially during Black History Month. In response, the City of Sammamish deleted  
 16 Ms. Tripathi's comment and all of her subsequent comments that made the same point. When  
 17 asked why it deleted her comment, the City pointed generally to its rules for the City of  
 18 Sammamish Facebook page without citing a specific rule. When Ms. Tripathi emailed the City of  
 19 Sammamish's communications team for more specific information, communications employee  
 20 Michaelene Fowler replied, stating that Ms. Tripathi's comment was "off-topic" and was deleted  
 21 for that reason.

22      1.5   Meanwhile, Ms. Freudenberg posted a series of comments in response to a  
 23 number of City Facebook posts about ongoings in the City of Sammamish. Ms. Freudenberg's  
 24 comments covered topics such as the City's budget, federal funding for families and businesses  
 25 during COVID, affordable housing, and the community farmer's market. The City deleted most  
 26 of Ms. Freudenberg's comments on these issues. It never provided Ms. Freudenberg any reason  
 27 as to why the comments were deleted.

1       1.6     As described in greater detail below, the Defendants have violated and continue to  
 2 violate citizens' free speech rights guaranteed by First Amendment of the United States  
 3 Constitution, including the rights of the Plaintiffs, through their content and viewpoint-based  
 4 restrictions. Plaintiffs seek a permanent injunction prohibiting the City of Sammamish from  
 5 engaging in unconstitutional censorship in this public forum, a declaration that their Facebook  
 6 "rules" are unconstitutional on their face and as applied, and for damages.

7                   **II.     PARTIES**

8       2.1     Plaintiff SARAH HAWES KIMSEY is an individual residing in the City of  
 9 Sammamish, located in King County in the State of Washington.

10      2.2     Plaintiff TARUL KODE TRIPATHI is an individual residing in the City of  
 11 Sammamish, located in King County in the State of Washington.

12      2.3     Plaintiff CATHERINE FREUDENBERG is an individual residing on Bainbridge  
 13 Island, located in Kitsap County in the State of Washington.

14      2.4     Defendant CITY OF SAMMAMISH is a municipal corporation in King County,  
 15 Washington.

16      2.5     Defendant CELIA WU is an individual who at all times relevant was the City of  
 17 Sammamish Communications Manager and a moderator for the City's Facebook page.

19                   **III.    JURISDICTION AND VENUE**

20      3.1     This Court has jurisdiction pursuant to 42. U.S.C. § 1983, as well as 28 U.S.C.  
 21 §§ 1331 and 1343.

22      3.2     Venue is appropriate in the Western District of Washington pursuant to 28 U.S.C.  
 23 § 1391 because all of the Defendants reside in this judicial district and because the events and  
 24 omissions giving rise to the claims alleged here occurred within the Western District of  
 25 Washington.

#### IV. FACTS

4.1 The City of Sammamish operates an official Facebook page titled “City of Sammamish - Government.” The Facebook page states that the City of Sammamish is responsible for the page.

4.2 The City's Facebook page contains the following rules for its page: "All posts are subject to public disclosure. Inappropriate and prohibited content subject to immediate removal from the site and includes content: (1) That is not related to the particular article being commented on (2) Promotes or advertises commercial service, entities or products (3) Supports or opposes political candidates or ballot propositions (4) Is obscene (5) Discusses or encourages illegal activity (6) Promotes, fosters or perpetuates discrimination on the basis of creed, color, age, religion, gender, marital status, status with regard to public assistance, national origin, physical or mental disability or sexual orientation (7) Provides information that may potentially compromise the safety or security of the public or public systems (8) Violates a legal ownership (9) Sexual content or links to sexual content (10) Comments from children under 13 cannot be posted in order to comply with the Children's Online Privacy Act (11) Anonymous posts."

4.3 In April 2020, the City of Sammamish hired Celia Wu to be its Communications Manager, the most senior communications position at the City. By nature of her position, Ms. Wu acts as a moderator for the City's Facebook page. The City hired Michaelene Fowler sometime in 2020 to be a Communications Coordinator at the City, reporting directly to Ms. Wu. Ms. Fowler is also a moderator for the City's Facebook page.

4.4 Due to COVID-19, the City of Sammamish began holding City Council meetings via Facebook live in the spring of 2020. The meetings were streamed on Facebook, recorded, then published as a video on the City's Facebook page. The City allowed and encouraged citizens to post comments both during the live stream and after the meetings are published.

4.5 The comments section under each of the City's Facebook posts constitutes a public forum.

1       4.6   On June 16, 2020, the City of Sammamish held a City Council meeting via  
 2 Facebook live and published it on or about the next day, June 17, 2020. Plaintiff Sarah Kimsey  
 3 watched the City Council meeting and posted six comments critical of the Council. Defendants  
 4 or their agents deleted all of her comments.

5       4.7   Plaintiff Catherine Freudenberg also watched the City Council meeting and  
 6 posted six comments about the meeting. Of the six comments only one was critical of the City  
 7 Council. Defendants or their agents deleted only the comment critical of the City Council and  
 8 allowed the other five to stand.

9       4.8   Defendants provided no reason or explanation for why they deleted any of the  
 10 Plaintiffs' comments.

11       4.9   On June 23, 2020, the City of Sammamish held a City Council Special meeting.  
 12 The City Council held the meeting via Facebook live and published it on or about the next day,  
 13 June 24, 2020. Both Ms. Kimsey and Ms. Freudenberg watched the meeting and posted  
 14 comments on the Facebook post about the contents of the meeting. Ms. Kimsey posted seven  
 15 comments, all of which were critical of the City Council. Ms. Freudenberg posted four  
 16 comments, two of which responded to Ms. Kimsey's posts. Defendants or their agents deleted all  
 17 of Ms. Kimsey's comments and the two comments made by Ms. Freudenberg that were in  
 18 response to Ms. Kimsey. Defendants provided no reason or explanation for why they deleted  
 19 their comments.

20       4.10   On June 30, 2020, the City of Sammamish held a City Council Special meeting.  
 21 The City Council held the meeting via Facebook live and published it on or about the next day,  
 22 July 1, 2020. Ms. Kimsey watched the meeting and posted two comments criticizing the City  
 23 Council for not following their own rules regarding how to vote and debate during the meeting.  
 24 Defendants or their agents deleted both comments. Defendants provided no reason or  
 25 explanation for why they deleted her comments.

26       4.11   On July 7, 2020, the City of Sammamish held a City Council meeting. The City  
 27 Council held the meeting via Facebook live and published it on or about the next day, July 8,

1 2020. Ms. Kimsey watched the meeting and posted eight comments, all of which were critical of  
 2 the City Council. Defendants or their agents deleted all her comments. Defendants provided no  
 3 reason or explanation for why they deleted her comments.

4 4.12 On July 14, 2020, the City of Sammamish held a City Council Special meeting.  
 5 The City Council held the meeting via Facebook live and published it on or about the next day,  
 6 July 15, 2020. Ms. Kimsey and Ms. Freudenberg watched and each posted comments about the  
 7 meeting. Ms. Kimsey posted nine comments, all of which were critical of the City Council.  
 8 Ms. Freudenberg posted seven comments, five of which were criticisms of the City Council.  
 9 Defendants or their agents deleted all of Ms. Kimsey's comments and one of Ms. Freudenberg's  
 10 critical comments. Defendants provided no reason or explanation for why they deleted their  
 11 comments.

12 4.13 On July 21, 2020, the City of Sammamish held a City Council meeting. The City  
 13 Council held the meeting via Facebook live and published it on or about the next day on  
 14 July 22, 2020. Ms. Kimsey watched the meeting and posted three comments. One comment  
 15 stated that the Deputy Assistant Manager should be paid the City manager's salary because he  
 16 was the one doing all the work. Another comment criticized the Deputy Mayor and the last one  
 17 stated that the City manager is "useless." Defendants or their agents deleted each of her  
 18 comments. Defendants provided no reason or explanation for why it deleted her comments.

19 4.14 On July 28, 2020, the City of Sammamish held a City Council Special meeting.  
 20 The City Council held the meeting via Facebook live and published it on or about the next day  
 21 on July 29, 2020. Ms. Kimsey watched the meeting and posted five comments, all of which were  
 22 critical of the City Council. Defendants or their agents deleted all of her comments. Defendants  
 23 provided no reason or explanation for why they deleted her comments.

24 4.15 On August 18, 2020, the City of Sammamish held a City Council meeting. The  
 25 City Council held the meeting via Facebook live and published it the next day on  
 26 August 19, 2020. Ms. Kimsey and Ms. Freudenberg watched the meeting. Ms. Kimsey posted  
 27 fourteen comments, all of which criticized the City Council. Ms. Freudenberg posted five

1 comments, all of which were critical of the City Council, except one that answered a question  
 2 Ms. Kimsey posed. Defendants or their agents deleted all of Ms. Kimsey's comments and the  
 3 one comment Ms. Freudenberg posted in response to Ms. Kimsey. Defendants provided no  
 4 reason or explanation for why they deleted her comments.

5 4.16 Following this, the City of Sammamish stopped holding City Council meetings  
 6 via Facebook live and instead streamed them on YouTube. After the meetings concluded, the  
 7 City Council archived the meetings on its YouTube page without any of the comments attached.

8 4.17 On February 11, 2021, The City of Sammamish shared a post on its Facebook  
 9 page on behalf of the Sammamish Police Foundation. The post contained a call for youth  
 10 between the ages of 14-20 to apply to become a Police Explorer. The Sammamish Police  
 11 Foundation utilizes the 'the thin blue line' flag as part of its branding and messaging. The 'thin  
 12 blue line' flag originally stood for solidarity and professional pride for police officers. However,  
 13 it has also been used in association with the Blue Lives Matter movement, a pro-police group  
 14 formed in response to Black Lives Matter, white supremacists and was flown by violent  
 15 insurrectionists at the Capitol on January 6, 2021. In the wake of recent protests, many see the  
 16 'thin blue line' flag as a beacon of police violence and in opposition to the racial justice  
 17 movement.

18 4.18 In light of this, Plaintiff Tarul Tripathi commented on the Facebook post, writing:  
 19 "This is disturbing. Its Black History Month. The Sammamish Police Foundation continues to  
 20 use a symbol indicative of support/solidarity with white supremacist groups. Do better." Another  
 21 Facebook user replied to Ms. Tripathi asking what symbol she meant. Ms. Tripathi responded  
 22 and cited to the Sammamish Police Foundation's Facebook page which used the 'thin blue line'  
 23 flag. Defendants or their agents deleted Ms. Tripathi's original comment and with it, all  
 24 subsequent ones. In response, Ms. Tripathi attempted to repost her comment. Defendants or their  
 25 agents deleted this post as well.

26 4.19 After other citizens' outcries demanding to know why the posts were removed,  
 27 the City of Sammamish explained that the City's Facebook page has posted rules and if a

1 comment violates those rules, the comment will be deleted. The City of Sammamish did not state  
 2 which rule Ms. Tripathi had violated.

3 4.20 Still confused, Ms. Tripathi emailed the communications team at City of  
 4 Sammamish to ask what rule she had violated. City Communications Employee Michaelene  
 5 Fowler responded that her comment was not related to the particular post being commented on.  
 6 Despite the fact that the City of Sammamish had posted on behalf of the Sammamish Police  
 7 Foundation, Ms. Fowler informed Ms. Tripathi that her comment would have been better  
 8 directed at the Police Foundation than on the comment section of the City's post.

9 4.21 On April 28, 2021, the City of Sammamish posted on its Facebook page that April  
 10 is "Distracted Driving Awareness Month." Ms. Freudenberg commented on this post by asking  
 11 about the CARES Act funds and the City budget. Defendants or their agents deleted this  
 12 comment. Ms. Freudenberg posted again regarding the availability of federal funds to assist with  
 13 mortgages, rent, payroll, etc. Defendants or their agents deleted this, too. Defendants provided no  
 14 explanation or reason for deleting Ms. Freudenberg's comments on this post.

15 4.22 The next day, the City of Sammamish posted on its Facebook page regarding a  
 16 pledge to save the Monarch butterflies. In response, Ms. Freudenberg made a comment  
 17 reminding the City about another pledge they had made about affordable housing. Defendants or  
 18 their agents deleted this comment and did not provide any explanation or reason for the deletion.

19 4.23 On April 30, 2021, the City of Sammamish posted information on its Facebook  
 20 page about a "story walk" that would be happening in May located in the Sammamish commons.  
 21 Ms. Freudenberg responded to the post by noting that typically the farmers market takes place in  
 22 the commons and accused the City of playing petty politics by not letting the farmers market to  
 23 continue as usual. Defendants or their agents deleted this comment and did not provide any  
 24 explanation or reason for the deletion.

25 4.24 On July 21, 2021, the City of Sammamish made a post about parking for a free  
 26 outdoor event being held. Ms. Freudenberg commented: "[S]peaking of parking, why does the  
 27 City have the parking cordoned off near the Commons during the Farmers Market. This area

1 should be open for the FM and the Y. This is the public's place. Can you stop the petty  
 2 retaliatory stuff and support the community for a change?" Defendants or their agents deleted  
 3 this comment and did not provide any explanation or reason for the deletion.

4 4.25 The next day, the City of Sammamish posted about sewer smoke testing that  
 5 would be taking place during August. Ms. Freudenberg commented: "Why don't you elaborate  
 6 on why they are doing this testing? Some testing is one thing, so is the County's "fix" for the  
 7 sewer issues. Information shouldn't be withheld from the public, it's a disservice. By the way,  
 8 when can we expect to see the rest of the videos from the recent hearing on the Town Center.  
 9 [sic.] Citizens have a right to know what's going on, what the issues are, etc." Defendants or  
 10 their agents deleted this comment and did not provide any explanation or reason for the deletion.

11 4.26 The Plaintiffs' comments on the City of Sammamish's Facebook page are  
 12 protected speech under the First Amendment. By and through the implementation of their written  
 13 policy regarding Facebook comments, Defendants have violated and continue to violate  
 14 Plaintiffs' right to free speech and the rights of others by selectively deleting their comments  
 15 from its official Facebook page. Defendants have a policy and practice that abridges individuals'  
 16 right to free speech. These practices are aimed only at those whose comments are critical of the  
 17 City of Sammamish. This censorship constitutes unconstitutional content-based and viewpoint-  
 18 based restriction on Plaintiffs' First Amendment rights.

19 **V. CLAIMS**

20 5.1 Plaintiffs allege and incorporate by reference the preceding paragraphs.

21 5.2 The acts described constitute violations of Plaintiff's rights under the First  
 22 Amendment to the United States Constitution through 42 U.S.C. § 1983.

23 5.3 The acts described above have caused damage to the Plaintiffs and will continue  
 24 to cause damage.

25 **VI. REQUEST FOR RELIEF**

26 WHEREFORE, Plaintiff requests relief against Defendants as follows:

6.1 A preliminary injunction and a permanent injunction preventing Defendants from continuing to violate the Constitution, and providing other equitable relief;

6.2 A declaration that Defendants' policies, practices, customs, or usages violate the constitution;

6.3 An award of nominal, compensatory, and punitive damages for each violation of Plaintiffs' First Amendment rights to free speech and expression in an amount to be proven at trial;

6.4 Costs, including reasonable attorneys' fees, under 42. U.S.C. § 1988 and to the extent otherwise permitted by law.

## 6.5 Leave to amend the pleadings;

6.6 Such other relief as may be just and equitable.

Dated this 14th day of September, 2021

*s/ Joe Shaaffer*  
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